

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re GENESIS B., a Person Coming Under
the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

RASHAD B.,

Defendant and Appellant.

D053333

(Super. Ct. No. SJ11647B)

APPEAL from a judgment of the Superior Court of San Diego County, Eric G. Helgesen, Judge. (Retired judge of the Tulane County Mun. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

Rashad B. appeals a judgment terminating his parental rights to his minor daughter Genesis B. under Welfare and Institutions Code section 366.26.¹ Rashad challenges the

¹ Statutory references are to the Welfare and Institutions Code.

sufficiency of the evidence to support the court's finding Genesis is likely to be adopted if parental rights are terminated and the legal authority to permit the maternal grandmother and aunt to coadopt. We conclude substantial evidence supports the finding of adoptability and the issue of coadoption is moot. Accordingly, we affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

In July 2006 two-year-old Genesis became a dependent of the juvenile court under section 300, subdivision (b) and was removed from parental custody based on findings her mother, Dominique B., abused drugs and alcohol, and her father, Rashad, was unable to protect and supervise her. Genesis and her brother Donnell² came to the attention of the San Diego County Health and Human Services Agency (Agency) after Dominique sought Agency's assistance when she lost her job and became homeless, and Rashad refused to help her or the children. The court placed Genesis in foster care.

Genesis had severe temper tantrums and required a change in foster placement. The maternal aunt and maternal grandmother both expressed an interest in having Genesis placed with them, but the aunt had a criminal history and the grandmother had health problems.

Rashad initially participated in reunification services, including drug treatment, therapy and parenting classes, and he visited Genesis every week. By the 12-month review, he had stopped participating and visiting Genesis. The court terminated services and set a section 366.26 selection and implementation hearing.

² This appeal does not involve Donnell.

Agency recommended adoption as Genesis's permanent plan. The social worker assessed Genesis as adoptable because she was generally healthy, developmentally on target and enjoyed age-appropriate activities. Although Genesis had behavior problems, she was participating in therapy and her temper tantrums had decreased.

Agency intended to place Genesis and Donnell with the maternal grandmother, who wanted to adopt them. The grandmother had a strong support system of family and friends, and was happy to provide Genesis and Donnell with security, stability, safety and permanence through adoption. She had no criminal or child protective services history and understood the legal and financial responsibilities of adoption. If for some reason the grandmother could not adopt Genesis and Donnell, there were 14 approved families willing to adopt children with their characteristics.

According to an addendum report, the grandmother's health had stabilized and her physician reported she was fit to care for the children. Genesis and Donnell were thriving in the grandmother's care, and had a strong and healthy attachment to her. The maternal aunt, Marie C., was going to coadopt with the grandmother.

At a contested selection and implementation hearing, the court found, by clear and convincing evidence, Genesis was adoptable and none of the circumstances of section 366.26, subdivision (c)(1) applied to preclude terminating parental rights.

DISCUSSION

I

Rashad challenges the sufficiency of the evidence to support the court's adoptability finding. He asserts: (1) Genesis had severe behavior problems, and her prior caregiver was unwilling to adopt her; (2) the grandmother's ability to adopt was questionable due to health and financial concerns; and (3) none of the 14 other prospective adoptive families seemed seriously interested in adoption.

A

When reviewing a court's finding a minor is adoptable, we apply the substantial evidence test. (*In re Josue G.* (2003) 106 Cal.App.4th 725, 732; *In re Lukas B.* (2000) 79 Cal.App.4th 1145, 1154.) If, on the entire record, there is substantial evidence to support the findings of the juvenile court, we must uphold those findings. We do not pass on the credibility of witnesses, attempt to resolve conflicts in the evidence or weigh the evidence. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 52.) Rather, we view the record favorably to the juvenile court's order and affirm the order even if there is substantial evidence supporting a contrary conclusion. (*Id.* at pp. 52-53.) The appellant has the burden of showing there is no evidence of a sufficiently substantial nature to support the finding or order. (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 947.)

The court can terminate parental rights only if it determines by clear and convincing evidence the minor is likely to be adopted. (§ 366.26, subd. (c)(1).) The statute requires clear and convincing evidence of the likelihood adoption will be realized within a reasonable time. (*In re Zeth S.* (2003) 31 Cal.4th 396, 406; *In re B.D.* (2008)

159 Cal.App.4th 1218, 1231.) In determining adoptability, the focus ordinarily is on whether a child's age, physical condition and emotional state will create difficulty in locating a family willing to adopt. (§ 366.22, subd. (b); *In re David H.* (1995) 33 Cal.App.4th 368, 378.) A minor considered to be adoptable need not be in a prospective adoptive home, and there need not be a prospective adoptive parent " 'waiting in the wings.' " (*In re Sarah M.* (1994) 22 Cal.App.4th 1642, 1649.) Nevertheless, "the fact that a prospective adoptive parent has expressed interest in adopting the minor is evidence that the minor's age, physical condition, mental state and other matters relating to the child are not likely to dissuade individuals from adopting the minor. In other words, a prospective adoptive parent's willingness to adopt generally indicates the minor is likely to be adopted within a reasonable time either by the prospective adoptive parent or by some other family." (*Id.* at pp. 1649-1650.)

If the child is generally adoptable, we do not examine the suitability of the prospective adoptive home. (*In re R.C.* (2008) 169 Cal.App.4th 486, 493-494; *In re Scott M.* (1993) 13 Cal.App.4th 839, 844.) Only when the minor is not adoptable because of age, physical condition and emotional state does the analysis shift from evaluating the characteristics of the child to determining "whether there is any legal impediment to the prospective adoptive parent's adoption and whether he or she is able to meet the needs of the child." (*In re Helen W.* (2007) 150 Cal.App.4th 71, 80; *In re Carl R.* (2005) 128 Cal.App.4th 1051, 1062; *In re Valerie W.* (2008) 162 Cal.App.4th 1, 13.) As long as the minor is generally adoptable, the issue of a family's suitability to adopt is reserved for the subsequent adoption proceeding. (*In re R.C.*, *supra*, 169 Cal.App.4th at p. 494.)

B

Here, the evidence showed Genesis was generally adoptable because she was young, healthy and developing appropriately. Although Genesis had some challenging behaviors, she was successfully addressing them in therapy. Her behavior, without more, does not create an impediment to adoption. (See *In re Erik P.* (2002) 104 Cal.App.4th 395, 400; cf. *In re Asia L.* (2003) 107 Cal.App.4th 498, 512 [sibling set of three was not adoptable because the children had emotional and psychological problems and there were no approved families willing to adopt children with similar characteristics].) Genesis is thriving in the home of her grandmother, who is fully aware of Genesis's needs and problems, yet remains committed to adopting her. Even if this placement failed, Agency has identified 14 approved families willing to adopt a child like Genesis, and there is no basis in the record to conclude these families are not "serious" about adopting her. Substantial evidence supports the court's finding Genesis is adoptable.

II

Rashad contends there is no legal authority entitling both the grandmother and maternal aunt to coadopt the children. However, because the court found Genesis is generally adoptable, the issue of whether the grandmother and maternal aunt could legally coadopt was not before the juvenile court. (*In re R.C.*, *supra*, 169 Cal.App.4th at pp. 493-494.) Moreover, county counsel has filed a motion to augment the record with postjudgment evidence of Agency's addendum report stating the grandmother alone would be adopting Genesis and Donnell. We grant county counsel's motion. (*In re Salvador M.* (2005) 133 Cal.App.4th 1415, 1420-1421.) Thus, we decline to address

Rashad's challenge to the coadoption process because it is moot. (*In re Lisa M.* (1986)
177 Cal.App.3d 915, 919.)

DISPOSITION

The judgment is affirmed.

HALLER, J.

WE CONCUR:

HUFFMAN, Acting P. J.

IRION, J.